

Remarks/Arguments:

Applicant wishes to thank Examiner James William Rogers, for the courteous consideration extended applicant's undersigned representative during telephone conferencing in connection with amending the claims in order to overcome the final rejection.

Claim 6, currently amended, and claims 7-10, previously presented, are pending.

Claims 1-5 are canceled without prejudice or disclaimer.

Claim 6 is amended to recite "an aqueous heterogeneous colloidal dispersion," which amendment was discussed, *i.a.*, during the aforesaid telephone conferences. Additionally, in order to more clearly define the invention, claim 6 is amended to recite "Q-10 in the form of an aqueous . . . colloidal dispersion." The amended language more clearly defines that the "dispersion" comprises Q-10 dispersed in water.

Claims 6 and 7 were rejected under 35 USC 102(e) for allegedly being anticipated by US6200550 (Masterson). Reconsideration is requested.

For anticipation under § 102 to exist, each and every claim limitation, as arranged in the claim, must be found in a single prior art reference. *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 225 USPQ 253 (Fed. Cir. 1985). The "absence" from a prior art reference of a single claim limitation "negates anticipation." *Kolster Speedsteel A B v. Crucible Inc.*, 230 USPQ 81, 84 (Fed. Cir. 1986). A reference that discloses "substantially the same invention" is not an anticipation. *Jamesbury Corp.* To anticipate the claim, each claim limitation must "*identically* appear" in the

reference disclosure. *Gechter v. Davidson*, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997) (*emphasis added*).

Masterson discloses a homologous dispersion. The claims are now limited to a "heterogeneous" dispersion. Accordingly, Masterson fails to meet the limitation to "an aqueous heterogeneous colloidal dispersion" on the present claims.

The claim limitation "an aqueous heterogeneous colloidal dispersion" being absent from Masterson "negates anticipation" of the present claims by the reference. *Kolster Speedsteel A B*, 230 USPQ at 84. Withdrawal of the rejection under §102(e) appears to be in order.

Additionally, withdrawal of the rejection under §102(e), based on Masterson, is in order for the reasons set forth in the response filed January 25, 2007, which reasons are incorporated herein by reference.

Claims 6-11 were rejected under 35 USC 103(a) as allegedly obvious based on Masterson in view US5981601 (Nagley). Reconsideration is requested.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art," *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), "and it is error to ignore specific limitations distinguishing over the [prior art] reference." *Ex parte Murphy*, 217 USPQ 479, 481 (PO Bd. App. 1982). A "ground of rejection is simply inadequate on its face . . . [when] the

cited references do not support each limitation of [the] claim." *In re Thrift*, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002).

The claims are now limited to a "heterogeneous" dispersion. Neither Masterson nor Nagley, taken separately or together, teaches or suggests "heterogeneous" dispersion. The disclosures of both cited references are limited to homologous dispersions. Accordingly, neither Masterson nor Nagley, taken separately or together, supports—in a teaching or suggestion—every limitation on the present claims.

Since "the cited references do not support each limitation" of the present claims, the §103(a) rejection based on Masterson and Nagley applied against the present claims would be "inadequate on its face." *Thrift*, 63 USPQ2d at 2008. Withdrawal of the rejection appears to be in order.

Additionally, withdrawal of the rejection under §103(a) based on Masterson and Nagley is in order for the reasons set forth in the response filed January 25, 2007, which reasons are incorporated herein by reference.

***Request for Acknowledgment of
Foreign Priority Under 35 USC 119***

A claim to foreign priority under 35 USC 119 has been made (inventorship declaration of record) and receipt of the certified copy of the priority document acknowledged in parent application no. 09/890,277 (Office Action mailed August 14, 2002).

The foreign priority claim was apparently granted, on the record. Nevertheless, for the sake of good order applicant requests that the Examiner mark the next Office communication—by

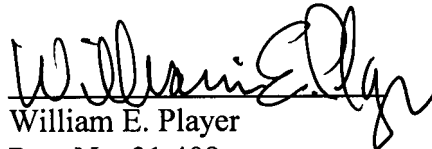
checking the appropriate boxes (as provided) on the communication form—to acknowledge, both,
the claim to §119 foreign priority and receipt of the certified copy.

Favorable action is requested.

Respectfully submitted,

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By


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